

REMARKS

Reconsideration of the subject application in view of the present amendments and remarks is respectfully requested. All rejections and objections are respectfully traversed.

Response to Restriction Requirement

The Examiner has issued a restriction requirement as between Group I claims (1, 5, 6, 8, 10, 11, 15, 16, 18 and 20), which are, according to the Examiner, drawn to “monitoring and inserting advertisements into a live audio stream” and Group II claims (21, 25-27, 30-31, 35-37 and 40-45), which are, also according to the Examiner, drawn to “seeking and navigating a stored audio segment.” Applicant respectfully notes that claims 41 and 43 depend directly from independent claim 1, which is part of the Group I claims, and that claims 42 and 44 depend directly from independent claim 11, which is also part of the Group I claims. Applicant, therefore, submits that claims 41-44 belong in Group I and has made its below election on that basis.

Applicant hereby elects, without traverse, the claims of Group I, i.e., claims 1, 5, 6, 8, 10, 11, 15, 16, 18, 20 and 41-44 and has withdrawn claims 21, 25-27, 30-31, 35-37, 40 and 45.

In the Claims

Applicant has amended claims 1 and 11 herein. No new matter is introduced by these amendments, support for which is found in the subject application, as originally filed, *inter alia*, at page 5, paragraph 35 and page 8, paragraph 47.

Applicant has amended claims herein solely to expedite prosecution of this application. In doing so, Applicant does not dedicate the subject matter of the amended claims, as originally filed and/or as previously pending, to the public, and does not acquiesce to the Examiner's current or previous reason(s) offered in support of the rejections of the amended claims and/or any claim(s) that depend(ed) therefrom. Applicant reserves the right to seek patent protection for claims similar or identical to the amended claims, as originally filed and/or as previously pending, in one or more subsequently filed and related applications.

Rejections Under 35 U.S.C. § 102

Claims 1, 5, 6, 8, 10, 11, 15, 16, 18, 20, 21, 25-27, 30, 31, 35-37 and 40-45 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Frerichs, U.S. Patent 6,684,249. Applicant respectfully traverses the rejection.

Independent claim 1 of the subject application, as amended, is directed to a “system for audio streaming.” The system comprises “an audio streaming server providing an audio stream” and a “client including a buffer storing at least portions of said audio stream received from said audio streaming server.” A buffer status sensor is operative to “measure a rate of playback of the contents of said buffer, and to measure a rate of said audio stream to determine if said audio stream is delayed or slowed down.” The buffer status sensor includes “an audio sampler for sampling portions of said audio stream” and the buffer status sensor is “identifying, as a function of the measured playback and audio stream rates, one or more locations in said audio stream where an audio segment could be inserted when said audio stream is determined to be delayed or slowed down.” Further, a client audio output inserter is “operative in response to an output from said buffer status sensor for providing a modified audio stream output including pre-recorded audio segments, which were not received from said audio streaming server, inserted at one or more of said audio stream locations identified by said buffer status sensor.”

Frerichs, in contrast, does not determine whether the audio stream is delayed or slowed down in order to determine where to place an ad. Frerichs discloses a method for inserting advertisements into streaming audio including providing audio data for first and second songs and providing a flag comprising advertisement indication and delay information at the server location. (Col. 6, lines 20-24). The flag is added onto the first song such that it is between the first and second songs at the server and then the flagged first and second audio data are transferred from a server location to a client location as streaming audio. (Col. 6, lines 24-30). An advertisement is then selected based upon a user profile and inserted into the streaming audio (i.e., at the flagged location after the first song) and the streaming audio, including the advertisement, is processed such that the first song is output through an audio output device followed by the advertisement and then followed by the second song. (Col. 6, lines 31-33). Frerichs also teaches that the flag includes data that indicates where an advertisement is to be inserted and often has other information such as the

length of the advertisement and the current content type. (Col. 7, lines 1-5). Thus, in accordance with Frerichs, a method monitors the streaming audio looking for the flag and once the flag has been found, the advertisement is inserted between the first audio data and the second audio data. (Col. 7, lines 48-51).

Applicant respectfully submits that independent claim 1, as amended, is patentable over Frerichs for at least the reason that there is no disclosure, teaching or suggestion in Frerichs of at least the claim 1 limitations of a buffer status sensor operative to “measure a rate of playback of the contents of said buffer, and to measure a rate of said audio stream determine if said audio stream is delayed or slowed down” and for “identifying one or more locations in said audio stream where an audio segment could be inserted when said audio stream is determined to be delayed or slowed down,” and a client audio output inserter is “operative in response to an output from said buffer status sensor to provide a modified audio stream output including pre-recorded audio segments, which were not received from said audio streaming server, inserted at one or more of said audio stream locations identified by said buffer status sensor.”

The Examiner has asserted that Frerichs discloses a rate determination at Col. 14, lines 54-67. Applicant respectfully disagrees.

The following is from Frerichs, Col. 14, line 54 - Col. 15, line 6; and Fig. 5B:

In still an alternative embodiment, the present method provides for an advertisement insertion, such as the one noted above, during a buffer time, which is shown in the simplified diagram of FIG. 5B. Here, a user turns on the audio device and switches onto a station. Since there is delay in the network, a certain buffer time 575 conventionally exists. As shown, the vertical axis represents intensity and the horizontal axis, which intersects the vertical axis, represents time. The buffer time is "dead time" where no audio is outputted on the audio output device. The user often waits and listens to a "hiss" sound or the like. During the buffer time, which occurs in conventional techniques, the present method inserts an advertisement, which is between T(0) and (T1). The method can calculate the difference between T(0) and (T1) and find an advertisement (as shown) with a similar time (but may be different) **to insert at the beginning of the listening session, but before the song (also as shown). Accordingly, the present invention can be**

used at the beginning of any audio session for audio streaming at a client location. (emphasis added)

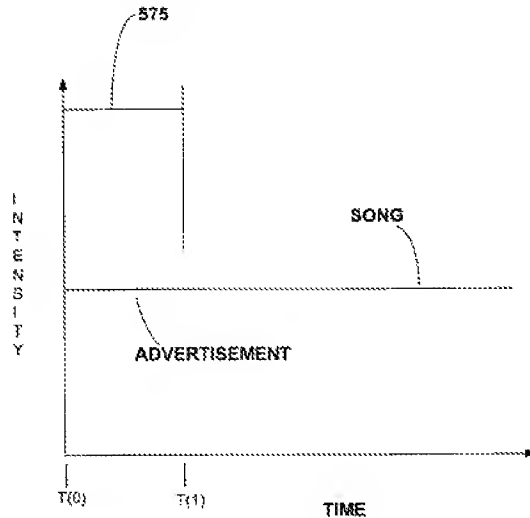


FIG. 5B

Applicant submits that the portion of Frerichs that the Examiner cites does not disclose measuring the audio stream playback rate, as it is respectfully submitted that the “certain buffer time” is not a delay in the audio stream, but is, instead, the latency in the conventional system due to the time it takes to load the buffer initially, i.e., after a switch onto a station. (Col. 14, lines 56-60). As Frerichs discloses, this ad is inserted at the beginning of the listening session “but before the song” and “can be used at the beginning of any audio session for audio streaming.” (Col. 15, lines 2-6). As has been previously submitted, Frerichs is not measuring a playback rate as the audio stream has not yet started playing because the playback buffer is being filled during the “buffer time.” Once the buffer is able to start playing, the ads of Frerichs will be inserted at the flag locations.

Applicant has found no teaching or suggestion in Frerichs of identifying a gap as a function of the stream rate as is disclosed and claimed. An advantage of the presently disclosed and claimed system is that gaps that occur at unpredictable points in the audio stream may be detected and pre-recorded audio segments, such as advertisements, can be inserted. Frerichs provides no disclosure for determining if an audio stream is delayed or slowed down and is limited to ad insertion only at flagged locations or during a buffer delay time. Thus, the presently claimed invention beneficially permits the utilization of unpredictably occurring gaps, whereas Frerichs does not. Accordingly, for

at least these reasons, Applicant submits that claim 1 is not anticipated by (or, for that matter, obvious in view of) Frerichs.

In addition, Applicant submits that claims 5, 6, 8, 10, 41 and 43 are also allowable for at least the reason that they depend directly from independent claim 1, which is believed to be allowable for at least the reasons set forth above.

Independent claim 11, as amended, is directed to a “method of audio streaming.” Applicant submits that, based on the language of claims 11 and 1, the remarks set forth above with respect to Frerichs in the context of the rejection of claim 1 are also applicable to the rejection of claim 11.

More specifically, claim 11, as amended, is allowable over Frerichs for at least the reason that Frerichs does not disclose, teach or suggest “measuring a rate of playback of said contents of said buffer and measuring a rate of said audio stream to determine if said audio stream is delayed or slowed down” and “identifying, as a function of the measured playback and audio stream rates, one or more locations in said audio stream where an audio segment could be inserted when said audio stream is determined to be delayed or slowed down,” and then “providing a modified audio stream, which includes inserting pre-recorded informational audio segments, which were not received in said audio stream, at one or more of said audio stream locations identified by an output from said measuring,” as recited in claim 11.

As discussed above in connection with claim 1, Frerichs places advertisements either between songs, i.e., at flagged locations, or during a buffer time and provides no disclosure, teaching or suggestion of identifying a gap as a function of measured rates as recited in claim 11, as amended. Accordingly, claim 11 is not anticipated by (or, for that matter, obvious in view of) Frerichs and allowance of claim 11 is respectfully requested.

In addition, Applicant submits that claims 15, 16, 18, 20, 42, and 44 are also allowable for at least the reason that they depend directly from independent claim 11, which is believed to be allowable for at least the reasons set forth above.

Interview Request

In the event the Examiner is not prepared to allow the application, the Applicant respectfully requests a telephone interview once the Examiner has reviewed Applicant's arguments and claims amendments and prior to preparation of a next Office Action.

In view of the foregoing, Applicant believes the pending claims are in condition for allowance and a notice to this effect is earnestly solicited. The Examiner is encouraged to telephone the undersigned attorney to discuss any matter that would expedite allowance of the present application. The Examiner is hereby authorized to charge any fees due to this submission, or credit any balance, to Deposit Account No. 23-0804.

Respectfully submitted,

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